

CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES BILL ANALYSIS

BILL NUMBER: SB 402 **VERSION:** AMENDED JANUARY 12, 2024

AUTHOR: WAHAB **SPONSOR:** AUTHOR

RECOMMENDED POSITION: NONE

SUBJECT: INVOLUNTARY COMMITMENT

Summary: This bill would include licensed mental health professionals, including mental health professionals who are not county providers, in the types of professionals who may be designated by a county to take someone into 72-hour custody if there is probable cause that they are a danger to themselves or others, or are gravely disabled as a result of a mental health disorder.

Existing Law:

- 1) Provides that a person may be taken into custody for up to 72 hours if there is probable cause that they are a danger to themselves or others, or are gravely disabled as a result of a mental health disorder. This may be done by the following persons (Welfare and Institutions Code (WIC) §5150(a)):
 - A peace officer;
 - A professional person in charge of a facility designated by the county for evaluation and treatment;
 - A member of the attending staff, as defined by regulation, of a facility designated by the county for evaluation and treatment;
 - Designated members of a mobile crisis team; or
 - A professional person designated by the county.
- 2) Specifies that the purpose of the 72-hour custody is for assessment, evaluation, crisis intervention, or placement for evaluation and treatment in a designated facility. (WIC §5150(a))
- 3) Permits each county behavioral health director to develop procedures for their county's designation and training of professionals designated to take someone into custody for 72 hours pursuant to Section 5150. The procedures may include (WIC §5121(a)):
 - The license types, practice disciplines, and experience of these professionals;
 - Training and testing requirements for these professionals;

- The application and approval process for these professionals; and
 - A process for monitoring and reviewing these professionals.
- 4) Requires the person taking someone into custody for 72 hours to assess whether the person being taken into custody can be properly served without being detained. (WIC §5150(c))
 - 5) Provides that if it is the judgement of the person taking someone into custody for 72 hours that the person being taken into custody cannot be served without being detained, then the admitting facility must require an application in writing containing specified information, including the circumstances under which the person's condition came to their attention, and whether the historical course of the person's mental disorder was considered. (WIC §5150(e))
 - 6) Requires a person being taken into custody to be provided with specified information orally and in writing. (WIC §5150(g) and (i))
 - 7) Requires a person authorized to take someone into custody to consider, when determining probable cause, available relevant information about the historical course of the person's mental disorder if they determine that information has a reasonable bearing on the determination of whether the person is a danger to themselves or others, or is gravely disabled as a result of a mental disorder. (WIC §5150.05(a))

This Bill:

- 1) Includes a licensed mental health professional in the list of professionals that a county may designate to take a person into custody for up to 72 hours if there is probable cause that they are a danger to themselves or others, or are gravely disabled as a result of a mental health disorder. (Welfare and Institutions Code (WIC) §5150(a)(1))
- 2) Defines a "licensed mental health professional" as a psychiatrist, psychologist, licensed clinical social worker, licensed marriage and family therapist, or licensed professional clinical counselor who has completed all required supervised clinical experience and who is designated by the county. (WIC §5150(a)(2))
- 3) Specifies that a licensed mental health professional does not need to be direct staff of the county or contracted by the county. (WIC §5150(a)(2))

Comment:

- 1) **Author's Intent.** The intent of this bill is to expand the mental health professionals who may be permitted to place 5150 holds to non-county mental health providers. In their fact sheet for the bill, the author's office explains the need for the bill as follows:

“The decision-making phase of initiating a 5150 does not always include the active involvement of mental health experts. The current reliance on individuals without specialized mental health training leads to less nuanced evaluations of situations involving mental health crises. The worst of these problems is an inappropriate response that results in death.

Many counties restrict their designated persons to those employed by or contracted for their respective mental-behavioral health facilities, limiting the ability of mental health professionals in private practice to support their clients in crisis.

Currently, 5150 initiations are limited to peace officers, and “county-designated” individuals. These limitations disempower the clinicians at community-based organizations who build trust with those individuals suffering with a mental health disorder.”

- 2) **Definition of a “Licensed Mental Health Professional.”** The bill defines a “licensed mental health professional” as a psychiatrist, psychologist, licensed clinical social worker, licensed marriage and family therapist, or licensed professional clinical counselor who has completed all required supervised clinical experience and who is designated by the county.

It is unclear if the requirement for a licensed mental health professional to have “completed all required supervised experience” is referring to supervised experience that may be required by a county, or if it refers to the hours of supervised experience required by a board for licensure. All of the Board’s fully licensed individuals have completed 3,000 hours of supervised experience.

- 3) **Arguments in Support and Opposition.** This bill has numerous supporters and opponents that cite a variety of reasons for their support and opposition. These are discussed on page 5 of the recent Senate Floor Analysis of the bill, dated January 12, 2024 and found [here](#).

Supporters state that law enforcement involvement is needed to be able to be admitted for psychiatric care, and they note that police encounters are dangerous for individuals in psychiatric crisis. They also note that the determination for an involuntary hold is better done by professionals with a relationship with the individual.

Opponents express concerns that enforcement of the bill will still require law enforcement involvement, because it would be the only way to get the person to the hospital if they do not want to go. They state that if the person is willing to go to the hospital, they should be encouraged to do so without taking away their voluntary status, as voluntary treatment is more likely to be successful. They also express concerns about if a peace officer and a mental health professional disagree about

the need for involuntary detention, which could be traumatizing to the person. They note that this could discourage someone from seeking mental health services, and it could increase the number of psychiatric holds.

4) **Support and Opposition**

Support:

- A Better Way
- Abode Services
- Alameda Family Services
- Alternative Family Services
- Asian American Recovery Services
- Asian Health Services
- Bay Area Community Resources
- Bonita House
- Beats Rhymes and Life
- Bi-Bett Corporation
- Brighter Beginnings
- Building Opportunities for Self Sufficiency (BOSS)
- Bay Area Community Services
- Community Health for Asian Americans
- Crisis Support Services of Alameda County
- East Bay Agency for Children
- East Bay Community Recovery Project – LifeLong
- Family Paths
- Felton Institute
- Filipino Advocates for Justice
- Fred Finch Youth and Family Services
- Greater New Beginnings Youth Services, Inc.
- Hayward Evaluation and Response Team (HEART)
- Horizon Services, Inc.
- Hume Center
- Jewish Family and Community Services
- La Cheim School Inc.
- La Clinica
- La Familia
- Lincoln
- Magnolia Women’s Recovery Programs, Inc.
- Mental Health Association of Alameda County
- The New Bridge Foundation, Inc.
- Treatment Advocacy Center
- Options Recovery Services
- Peers Envisioning and Engaging in Recovery Services (PEERS)
- Roots Community Health Center

- Second Chance, Inc.
- Seneca Family of Agencies
- Side by Side
- Through the Looking Glass
- UCSF Benioff Children's Hospital
- Westcoast Children's Clinic
- West Oakland Health Council

Opposition:

- Cal Voices
- County Behavioral Health Directors Association of California
- Disability Rights California
- Mental Health America of California

5) History

01/29/24 In Assembly. Read first time. Held at Desk.
 01/29/24 Read third time. Passed. (Ayes 37. Noes 1. Page 3047.) Ordered to the Assembly.
 01/12/24 Read second time and amended. Ordered to third reading.
 01/11/24 From committee: Do pass as amended. (Ayes 10. Noes 0. Page 2979.) (January 11).
 01/10/24 From committee: Do pass and re-refer to Com. on JUD. (Ayes 9. Noes 1. Page 2970.) (January 10). Re-referred to Com. on JUD.
 01/04/24 Set for hearing January 11 in JUD. pending receipt.
 01/03/24 Re-referred to Coms. on HEALTH and JUD.
 01/03/24 Re-referred to Com. on RLS.
 01/03/24 Withdrawn from committee.
 01/03/24 Set for hearing January 10.
 01/03/24 From committee with author's amendments. Read second time and amended. Re-referred to Com. on HEALTH.
 02/22/23 Referred to Coms. on HEALTH and G.O.
 02/10/23 From printer. May be acted upon on or after March 12.
 02/09/23 Introduced. Read first time. To Com. on RLS. for assignment. To print.

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AMENDED IN SENATE JANUARY 12, 2024

AMENDED IN SENATE JANUARY 3, 2024

SENATE BILL

No. 402

Introduced by Senator Wahab

February 9, 2023

An act to amend Section 5150 of the Welfare and Institutions Code, relating to mental health.

legislative counsel's digest

SB 402, as amended, Wahab. Involuntary commitment.

Existing law, the Lanterman-Petris-Short Act, authorizes the involuntary commitment and treatment of persons with specified mental disorders. Under the act, when a person, as a result of a mental health disorder, is a danger to self or others, or gravely disabled, the person may, upon probable cause, be taken into custody by specified individuals, including, among others, by peace officers and designated members of a mobile crisis team, and placed in a facility designated by the county and approved by the State Department of Health Care Services for up to 72 hours for evaluation and treatment.

This bill would additionally authorize a person to be taken into custody, pursuant to those provisions, by a licensed mental health professional, as defined.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 5150 of the Welfare and Institutions Code
- 2 is amended to read:

1 5150. (a) (1) When a person, as a result of a mental health
2 disorder, is a danger to others or to themselves, or is gravely
3 disabled, a peace officer, licensed mental health professional,
4 professional person in charge of a facility designated by the county
5 for evaluation and treatment, member of the attending staff, as
6 defined by regulation, of a facility designated by the county for
7 evaluation and treatment, designated members of a mobile crisis
8 team, or professional person designated by the county may, upon
9 probable cause, take, or cause to be taken, the person into custody
10 for a period of up to 72 hours for assessment, evaluation, and crisis
11 intervention or placement for evaluation and treatment in a facility
12 designated by the county for evaluation and treatment and approved
13 by the State Department of Health Care Services. The 72-hour
14 period begins at the time when the person is first detained. At a
15 minimum, assessment, as defined in Section 5150.4, and
16 evaluation, as defined in subdivision (a) of Section 5008, shall be
17 conducted and provided on an ongoing basis. Crisis intervention,
18 as defined in subdivision (e) of Section 5008, may be provided
19 concurrently with assessment, evaluation, or any other service.

20 (2) (A) As used in this section, “licensed mental health
21 professional” means a psychiatrist, psychologist, licensed clinical
22 social worker, licensed marriage and family therapist, or a licensed
23 professional clinical counselor who has completed all required
24 supervised clinical ~~experience~~. *experience, who is designated by*
25 *the county.*

26 (B) *For purposes of this section, a licensed mental health*
27 *professional does not need to be direct staff of, or contracted by,*
28 *the county.*

29 (b) When determining if a person should be taken into custody
30 pursuant to subdivision (a), the individual making that
31 determination shall apply the provisions of Section 5150.05 and
32 shall not be limited to consideration of the danger of imminent
33 harm.

34 (c) The professional person in charge of a facility designated
35 by the county for evaluation and treatment, member of the
36 attending staff, or professional person designated by the county
37 shall assess the person to determine whether the person can be
38 properly served without being detained. If, in the judgment of the
39 professional person in charge of the facility designated by the
40 county for evaluation and treatment, member of the attending staff,

1 or professional person designated by the county, the person can
2 be properly served without being detained, the person shall be
3 provided evaluation, crisis intervention, or other inpatient or
4 outpatient services on a voluntary basis. This subdivision does not
5 prevent a peace officer from delivering an individual to a
6 designated facility for assessment under this section. Furthermore,
7 the assessment requirement of this subdivision does not require a
8 peace officer to perform any additional duties other than those
9 specified in Sections 5150.1 and 5150.2.

10 (d) If a person is evaluated by a professional person in charge
11 of a facility designated by the county for evaluation or treatment,
12 member of the attending staff, or professional person designated
13 by the county and is found to be in need of mental health services,
14 but is not admitted to the facility, all available alternative services
15 provided pursuant to subdivision (c) shall be offered, as determined
16 by the county mental health director.

17 (e) If, in the judgment of the professional person in charge of
18 the facility designated by the county for evaluation and treatment,
19 member of the attending staff, or the professional person designated
20 by the county, the person cannot be properly served without being
21 detained, the admitting facility shall require an application in
22 writing stating the circumstances under which the person's
23 condition was called to the attention of the peace officer, licensed
24 mental health professional, professional person in charge of the
25 facility designated by the county for evaluation and treatment,
26 member of the attending staff, or professional person designated
27 by the county and stating that the peace officer, licensed mental
28 health professional, professional person in charge of the facility
29 designated by the county for evaluation and treatment, member of
30 the attending staff, or professional person designated by the county
31 has probable cause to believe that the person is, as a result of a
32 mental health disorder, a danger to others or to themselves, or is
33 gravely disabled. The application shall also record whether the
34 historical course of the person's mental disorder was considered
35 in the determination pursuant to Section 5150.05. If the probable
36 cause is based on the statement of a person other than the peace
37 officer, licensed mental health professional, professional person
38 in charge of the facility designated by the county for evaluation
39 and treatment, member of the attending staff, or professional person
40 designated by the county, the person shall be liable in a civil action

1 for intentionally giving a statement that the person knows to be
2 false. A copy of the application shall be treated as the original.

3 (f) (1) At the time a person is taken into custody for evaluation,
4 or within a reasonable time thereafter, unless a responsible relative
5 or the guardian or conservator of the person is in possession of the
6 person’s personal property, the person taking them into custody
7 shall take reasonable precautions to preserve and safeguard the
8 personal property in the possession of or on the premises occupied
9 by the person. The person taking them into custody shall then
10 furnish to the court a report generally describing the person’s
11 property so preserved and safeguarded and its disposition, in
12 substantially the form set forth in Section 5211, except that if a
13 responsible relative or the guardian or conservator of the person
14 is in possession of the person’s property, the report shall include
15 only the name of the relative or guardian or conservator and the
16 location of the property, whereupon responsibility of the person
17 taking them into custody for that property shall terminate.

18 (2) As used in this section, “responsible relative” includes the
19 spouse, parent, adult child, domestic partner, grandparent,
20 grandchild, or adult brother or sister of the person.

21 (g) (1) Each person, at the time the person is first taken into
22 custody under this section, shall be provided, by the person who
23 takes them into custody, the following information orally in a
24 language or modality accessible to the person. If the person cannot
25 understand an oral advisement, the information shall be provided
26 in writing. The information shall be in substantially the following
27 form:

28
29 My name is _____.

30 I am a _____ .
31 (peace officer/mental health professional)

32 with _____ .
33 (name of agency)

34 You are not under criminal arrest, but I am taking you for an examination by
35 mental health professionals at _____.

36 _____
37 (name of facility)

38 You will be told your rights by the mental health staff.

39

1 (2) If taken into custody at the person’s own residence, the
2 person shall also be provided the following information:

3
4 You may bring a few personal items with you, which I will have
5 to approve. Please inform me if you need assistance turning off
6 any appliance or water. You may make a phone call and leave a
7 note to tell your friends or family where you have been taken.

8
9 (h) The designated facility shall keep, for each patient evaluated,
10 a record of the advisement given pursuant to subdivision (g), which
11 shall include all of the following:

- 12 (1) The name of the person detained for evaluation.
- 13 (2) The name and position of the peace officer or mental health
14 professional taking the person into custody.
- 15 (3) The date the advisement was completed.
- 16 (4) Whether the advisement was completed.
- 17 (5) The language or modality used to give the advisement.
- 18 (6) If the advisement was not completed, a statement of good
19 cause as defined by regulations of the State Department of Health
20 Care Services.

21 (i) (1) Each person admitted to a facility designated by the
22 county for evaluation and treatment shall be given the following
23 information by admission staff of the facility. The information
24 shall be given orally and in writing and in a language or modality
25 accessible to the person. The written information shall be available
26 to the person in English and in the language that is the person’s
27 primary means of communication. Accommodations for other
28 disabilities that may affect communication shall also be provided.
29 The information shall be in substantially the following form:

30
31 My name is _____.

32 My position here is _____.

33 You are being placed into this psychiatric facility because it is our
34 professional opinion that, as a result of a mental health disorder, you are likely
35 to (check applicable):

- 36 Harm yourself.
- 37 Harm someone else.
- 38 Be unable to take care of your own food, clothing, and housing needs.

39 We believe this is true because
40 _____

1 (list of the facts upon which the allegation of dangerous
2 or gravely disabled due to mental health disorder is based, including pertinent
3 facts arising from the admission interview).

4 You will be held for a period up to 72 hours. During the 72 hours you may
5 also be transferred to another facility. You may request to be evaluated or
6 treated at a facility of your choice. You may request to be evaluated or treated
7 by a mental health professional of your choice. We cannot guarantee the facility
8 or mental health professional you choose will be available, but we will honor
9 your choice if we can.

10 During these 72 hours you will be evaluated by the facility staff, and you
11 may be given treatment, including medications. It is possible for you to be
12 released before the end of the 72 hours. But if the staff decides that you need
13 continued treatment you can be held for a longer period of time. If you are
14 held longer than 72 hours, you have the right to a lawyer and a qualified
15 interpreter and a hearing before a judge. If you are unable to pay for the lawyer,
16 then one will be provided to you free of charge.

17 If you have questions about your legal rights, you may contact the county
18 Patients' Rights Advocate at _____
19 (phone number for the county Patients' Rights
20 _____).

21 Advocacy office)
22 Your 72-hour period began _____
23 (date/time)

24
25 (2) If the notice is given in a county where weekends and
26 holidays are excluded from the 72-hour period, the person shall
27 be informed of this fact.

28 (j) For each person admitted for evaluation and treatment, the
29 facility shall keep with the person's medical record a record of the
30 advisement given pursuant to subdivision (i), which shall include
31 all of the following:

- 32 (1) The name of the person performing the advisement.
- 33 (2) The date of the advisement.
- 34 (3) Whether the advisement was completed.
- 35 (4) The language or modality used to communicate the
36 advisement.
- 37 (5) If the advisement was not completed, a statement of good
38 cause.

39 (k) A facility to which a person who is involuntarily detained
40 pursuant to this section is transported shall notify the county

- 1 patients' rights advocate, as defined in Section 5500, if a person
- 2 has not been released within 72 hours of the involuntary detention.

O